

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           BAYER CORPORATION

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Bayer Corporation is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22          signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23          codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24          assessed against any person who fails to file lobbying disclosure reports within the  
25          time required by law.

1           3. The initial 2007 lobbying disclosure report for Bayer Corporation was  
2 required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Bayer Corporation. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Bayer Corporation failed to file its L-5A on or before February 15, 2007.

12           6. On February 20, 2007, the Commissioner sent a letter to Sandra Oliver  
13 stating that the principal's January L-5A report was due February 15, 2007, but had  
14 not been received. The letter stated that a civil penalty started being assessed on  
15 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
16 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
17 delinquent report immediately, followed by a hard copy.

18           7. On February 20, 2007, the principal filed its report. Because the report  
19 was filed 2 days late, a \$100 civil penalty was assessed by the Commissioner.

20           8. Bayer Corporation requested a hearing to contest the civil penalty. The  
21 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on  
22 April 30, 2007. Bayer Corporation filed a written Waiver of Hearing and submitted  
23 a written statement for the Commissioner's consideration.

9. In its written statement the Bayer Corporation contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Bayer  
7 Corporation to file a report for January, 2007, even if Bayer Corporation made no  
8 lobbying payments during the reporting period.

9           6. As explained below, Bayer Corporation provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Bayer Corporation is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Sandra Oliver  
17 Bayer Corporation  
18 400 Morgan Lane  
19 West Haven CT 06516

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           BILLINGS GENERATION, INC.

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13           resulting from its late filing of a lobbying disclosure report. The principal filed a  
14           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15           written statement for the Commissioner's consideration.

16           Based on the written submissions of the principal, the documents of record in  
17           the Commissioner's file, and the applicable law, the Commissioner makes the  
18           following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Billings Generation, Inc. is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor
- 22           signed it into law. The law took effect on February 18, 2003. House Bill 38, now
- 23           codified at § 5-7-306, MCA, establishes civil penalties that are required to be
- 24           assessed against any person who fails to file lobbying disclosure reports within the
- 25           time required by law.
- 26
- 27

1           3. The initial 2007 lobbying disclosure report for Billings Generation, Inc.  
2 was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Billings Generation, Inc.. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Billings Generation, Inc. failed to file its L-5A on or before February 15,  
12 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Owen Orndorff  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 20, 2007, the principal filed its report. Because the report  
20 was filed 2 days late, a \$100 civil penalty was assessed by the Commissioner.

21           8. Billings Generation, Inc. requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on April 30, 2007. Billings Generation, Inc. filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.

9. In its written statement the Billings Generation, Inc. contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.



1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Billings  
7 Generation, Inc. to file a report for January, 2007, even if Billings Generation, Inc.  
8 made no lobbying payments during the reporting period.

9           6. As explained below, Billings Generation, Inc. provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Billings Generation, Inc. is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Owen Orndorff  
17 Billings Generation, Inc.  
18 1087 W. River St. #200  
19 Boise ID 83702

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
BILLINGS PUBLIC SCHOOLS

6                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
7                   ORDER, AND MEMORANDUM OPINION

8  
9           These informal contested case proceedings were filed before the  
10 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13 resulting from its late filing of a lobbying disclosure report. The principal filed a  
14 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15 written statement for the Commissioner's consideration.

16           Based on the written submissions of the principal, the documents of record in  
17 the Commissioner's file, and the applicable law, the Commissioner makes the  
18 following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Billings Public Schools is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24 assessed against any person who fails to file lobbying disclosure reports within the  
25 time required by law.
- 26  
27

1           3. The initial 2007 lobbying disclosure report for Billings Public Schools  
2 was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Billings Public Schools. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Billings Public Schools failed to file its L-5A on or before February 15,  
12 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to George "Jack"  
14 Copps stating that the principal's January L-5A report was due February 15, 2007,  
15 but had not been received. The letter stated that a civil penalty started being  
16 assessed on February 16, 2007, at \$50 per day, and would continue until the report  
17 was filed or until the penalty amount reached \$2,500. The letter urged the principal  
18 to fax the delinquent report immediately, followed by a hard copy.

19           7. On February 27, 2007, the principal filed its report. Because the report  
20 was filed 7 days late, a \$350 civil penalty was assessed by the Commissioner.

21           8. Billings Public Schools requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on May 02, 2007. Billings Public Schools filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.



1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Billings  
7 Public Schools to file a report for January, 2007, even if Billings Public Schools  
8 made no lobbying payments during the reporting period.

9           6. As explained below, Billings Public Schools provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Billings Public Schools is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6   
7

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 George "Jack" Copps  
17 Billings Public Schools  
18 415 North 30th St.  
19 Billings MT 59101

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 BROADUS PUBLIC SCHOOLS

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13 resulting from its late filing of a lobbying disclosure report. The principal filed a  
14 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15 written statement for the Commissioner's consideration.

16           Based on the written submissions of the principal, the documents of record in  
17 the Commissioner's file, and the applicable law, the Commissioner makes the  
18 following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Broadus Public Schools is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24 assessed against any person who fails to file lobbying disclosure reports within the  
25 time required by law.



1           3. The initial 2007 lobbying disclosure report for Broadus Public Schools  
2 was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Broadus Public Schools. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Broadus Public Schools failed to file its L-5A on or before February 15,  
12 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Darlene Walsh  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On March 7, 2007, the principal filed its report. Because the report was  
20 filed 13 days late, a \$650 civil penalty was assessed by the Commissioner.

21           8. Broadus Public Schools requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on April 30, 2007. Broadus Public Schools filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.

9. In its written statement the Broadus Public Schools contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Broadus  
7 Public Schools to file a report for January, 2007, even if Broadus Public Schools  
8 made no lobbying payments during the reporting period.

9           6. As explained below, Broadus Public Schools provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Broadus Public Schools is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Darlene Walsh  
17 Broadus Public Schools  
18 PO Box 500  
19 Broadus MT 59317

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           COLSTRIP ENERGY LIMITED  
7           PARTNERSHIP

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. Colstrip Energy Limited Partnership is a principal registered with the  
23           Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
            time required by law.

1           3. The initial 2007 lobbying disclosure report for Colstrip Energy Limited  
2 Partnership was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Colstrip Energy Limited Partnership. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Colstrip Energy Limited Partnership failed to file its L-5A on or before  
13 February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Owen Orndorff  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 20, 2007, the principal filed its report. Because the report  
21 was filed 2 days late, a \$100 civil penalty was assessed by the Commissioner.

22           8. Colstrip Energy Limited Partnership requested a hearing to contest the  
23 civil penalty. The Commissioner issued a Notice of Agency Action and Opportunity  
24 for Hearing on April 30, 2007. Colstrip Energy Limited Partnership filed a written  
25 Waiver of Hearing and submitted a written statement for the Commissioner's  
26 consideration.

27

9. In its written statement the Colstrip Energy Limited Partnership contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Colstrip  
7 Energy Limited Partnership to file a report for January, 2007, even if Colstrip  
8 Energy Limited Partnership made no lobbying payments during the reporting period.

9           6. As explained below, Colstrip Energy Limited Partnership provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.  
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26  
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1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Colstrip Energy Limited Partnership is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

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7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Owen Orndorff  
17 Colstrip Energy Limited Partnership  
18 1087 W. River St. #200  
19 Boise ID 83702

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           EXPEDIA

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13           resulting from its late filing of a lobbying disclosure report. The principal filed a  
14           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15           written statement for the Commissioner's consideration.

16           Based on the written submissions of the principal, the documents of record in  
17           the Commissioner's file, and the applicable law, the Commissioner makes the  
18           following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Expedia is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24           assessed against any person who fails to file lobbying disclosure reports within the  
25           time required by law.
- 26
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1           3. The initial 2007 lobbying disclosure report for Expedia was required to be  
2 filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Expedia. The email advised principals that a lobbying  
5 financial disclosure report covering the month of January, 2007 was required to be  
6 filed by February 15, 2007. The email referenced the appropriate form that was  
7 required to be filed, known as a form L-5A, and noted that it was available for  
8 download on the Commissioner's website. Citing the provisions of § 5-7-208(4),  
9 MCA, the email stated: "A report must be filed in this office even though neither  
10 lobbying nor incurring of lobbying expenses may have occurred."

11           5. Expedia failed to file its L-5A on or before February 15, 2007.

12           6. On February 20, 2007, the Commissioner sent a letter to Brent Thompson  
13 stating that the principal's January L-5A report was due February 15, 2007, but had  
14 not been received. The letter stated that a civil penalty started being assessed on  
15 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
16 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
17 delinquent report immediately, followed by a hard copy.

18           7. On March 5, 2007, the principal filed its report. Because the report was  
19 filed 11 days late, a \$550 civil penalty was assessed by the Commissioner.

20           8. Expedia requested a hearing to contest the civil penalty. The  
21 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on  
22 April 30, 2007. Expedia filed a written Waiver of Hearing and submitted a written  
23 statement for the Commissioner's consideration.

9. In its written statement the Expedia contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Expedia  
7 to file a report for January, 2007, even if Expedia made no lobbying payments  
8 during the reporting period.

9           6. As explained below, Expedia provided information and evidence  
10 establishing factors or circumstances in mitigation that justifies waiver of the civil  
11 penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Expedia is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

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8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Brent Thompson  
17 Expedia  
18 1120 G Street NW, Suite 440  
19 Washington DC 20005

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
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1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 FIRST INTERSTATE  
7 BANCSYSTEM, INC

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER, AND MEMORANDUM OPINION

These informal contested case proceedings were filed before the Commissioner of Political Practices (Commissioner) to consider the appeal of the principal referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty resulting from its late filing of a lobbying disclosure report. The principal filed a written Waiver of Hearing waiving its right to an in-person hearing, and submitted a written statement for the Commissioner's consideration.

Based on the written submissions of the principal, the documents of record in the Commissioner's file, and the applicable law, the Commissioner makes the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. First Interstate BancSystem, Inc is a principal registered with the Commissioner.

2. The 2003 Montana Legislature passed House Bill 38 and the governor signed it into law. The law took effect on February 18, 2003. House Bill 38, now codified at § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any person who fails to file lobbying disclosure reports within the time required by law.

1           3. The initial 2007 lobbying disclosure report for First Interstate  
2 BancSystem, Inc was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including First Interstate BancSystem, Inc. The email advised principals  
5 that a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. First Interstate BancSystem, Inc failed to file its L-5A on or before  
12 February 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Lyle Knight  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 20, 2007, the principal filed its report. Because the report  
20 was filed 2 days late, a \$100 civil penalty was assessed by the Commissioner.

21           8. First Interstate BancSystem, Inc requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on May 03, 2007. First Interstate BancSystem, Inc filed a written Waiver  
24 of Hearing and submitted a written statement for the Commissioner's consideration.



9. In its written statement the First Interstate BancSystem, Inc contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required First  
7 Interstate BancSystem, Inc to file a report for January, 2007, even if First Interstate  
8 BancSystem, Inc made no lobbying payments during the reporting period.

9           6. As explained below, First Interstate BancSystem, Inc provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against First Interstate BancSystem, Inc is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Lyle Knight  
17 First Interstate BancSystem, Inc  
18 PO Box 30918  
19 Billings MT 59116

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           FLATHEAD COUNTY

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Flathead County is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22          signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23          codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24          assessed against any person who fails to file lobbying disclosure reports within the  
25          time required by law.

1           3. The initial 2007 lobbying disclosure report for Flathead County was  
2 required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Flathead County. The email advised principals that a lobbying  
5 financial disclosure report covering the month of January, 2007 was required to be  
6 filed by February 15, 2007. The email referenced the appropriate form that was  
7 required to be filed, known as a form L-5A, and noted that it was available for  
8 download on the Commissioner's website. Citing the provisions of § 5-7-208(4),  
9 MCA, the email stated: "A report must be filed in this office even though neither  
10 lobbying nor incurring of lobbying expenses may have occurred."

11           5. Flathead County failed to file its L-5A on or before February 15, 2007.

12           6. On February 20, 2007, the Commissioner sent a letter to Joseph  
13 Brenneman stating that the principal's January L-5A report was due February 15,  
14 2007, but had not been received. The letter stated that a civil penalty started being  
15 assessed on February 16, 2007, at \$50 per day, and would continue until the report  
16 was filed or until the penalty amount reached \$2,500. The letter urged the principal  
17 to fax the delinquent report immediately, followed by a hard copy.

18           7. On February 21, 2007, the principal filed its report. Because the report  
19 was filed 3 days late, a \$150 civil penalty was assessed by the Commissioner.

20           8. Flathead County requested a hearing to contest the civil penalty. The  
21 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on  
22 April 30, 2007. Flathead County filed a written Waiver of Hearing and submitted a  
23 written statement for the Commissioner's consideration.

9. In its written statement the Flathead County contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4),MCA, read together, required Flathead  
7 County to file a report for January, 2007, even if Flathead County made no  
8 lobbying payments during the reporting period.

9           6. As explained below, Flathead County provided information and evidence  
10 establishing factors or circumstances in mitigation that justifies waiver of the civil  
11 penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Flathead County is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Joseph Brenneman  
17 Flathead County  
18 800 South Main  
19 Kalispell MT 59901

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27



1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 J. DENIS O' TOOLE, HSBC GR  
7 CORP

8  
9  
10                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
11                   ORDER, AND MEMORANDUM OPINION

12                   These informal contested case proceedings were filed before the  
13 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
14 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
15 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
16 resulting from its late filing of a lobbying disclosure report. The principal filed a  
17 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
18 written statement for the Commissioner's consideration.

19                   Based on the written submissions of the principal, the documents of record in  
20 the Commissioner's file, and the applicable law, the Commissioner makes the  
21 following findings of fact, conclusions of law, and order.

22                   **FINDINGS OF FACT**

23                   1. J. Denis O' Toole, HSBC GR Corp is a principal registered with the  
24 Commissioner.

25                   2. The 2003 Montana Legislature passed House Bill 38 and the governor  
26 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
27 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
assessed against any person who fails to file lobbying disclosure reports within the  
time required by law.

1           3. The initial 2007 lobbying disclosure report for J. Denis O' Toole, HSBC  
2 GR Corp was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including J. Denis O' Toole, HSBC GR Corp. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. J. Denis O' Toole, HSBC GR Corp failed to file its L-5A on or before  
13 February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to J. Dennis  
15 O'Toole stating that the principal's January L-5A report was due February 15, 2007,  
16 but had not been received. The letter stated that a civil penalty started being  
17 assessed on February 16, 2007, at \$50 per day, and would continue until the report  
18 was filed or until the penalty amount reached \$2,500. The letter urged the principal  
19 to fax the delinquent report immediately, followed by a hard copy.

20           7. On March 12, 2007, the principal filed its report. Because the report was  
21 filed 16 days late, a \$800 civil penalty was assessed by the Commissioner.

22           8. J. Denis O' Toole, HSBC GR Corp requested a hearing to contest the civil  
23 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
24 Hearing on May 01, 2007. J. Denis O' Toole, HSBC GR Corp filed a written  
25 Waiver of Hearing and submitted a written statement for the Commissioner's  
26 consideration.

27

1 9. In its written statement the J. Denis O' Toole, HSBC GR Corp contends  
2 the L-5A form that was posted on the Commissioner's website contained language  
3 that was confusing. The principal notes that the L-5A form contains the following  
4 statement applicable to reports for the period January 1 through January 31:

5 Report is required only if reportable payments exceeding \$2,300 for  
6 lobbying activities or to support or assist lobbying activities have been  
made during the reporting period.

7 The principal contends that this statement on the L-5A form led to its conclusion  
8 that no report needed to be filed, because reportable payments exceeding \$2,300  
9 were not made by the principal during the reporting period.

10 10. After receiving many inquiries regarding the language on the L-5A, the  
11 Commissioner reviewed the language on the form and made some revisions  
12 intended to clarify the reporting requirements. The revised version of the form was  
13 posted on the Commissioner's website in April, 2007.

#### 14 CONCLUSIONS OF LAW

15 1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-  
16 604 and 5-7-306, MCA.

17 2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

18 3. § 5-7-306, MCA, provides:

19 **Civil penalties for delays in filing -- option for hearing --**  
20 **suspension of penalty.** (1) In addition to any other penalties or  
21 remedies established by this chapter, a person who fails to file a report  
22 within the time required by this chapter is subject to a civil penalty of  
\$50 for each working day that the report is late until the report is filed  
or until the penalties reach a maximum of \$2,500 for each late report.

23 The person against whom a penalty is assessed may request an informal contested  
24 case hearing before the Commissioner. At the hearing, the Commissioner is  
25 required to consider any factors or circumstances in mitigation, and may reduce or  
26 waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required J. Denis  
7 O' Toole, HSBC GR Corp to file a report for January, 2007, even if J. Denis O'  
8 Toole, HSBC GR Corp made no lobbying payments during the reporting period.

9           6. As explained below, J. Denis O' Toole, HSBC GR Corp provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.  
25  
26  
27

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against J. Denis O' Toole, HSBC GR Corp is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 J. Dennis O'Toole  
17 J. Denis O' Toole, HSBC GR Corp  
18 1401 I Street NW Suite 520  
19 Washington DC 20005

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           KEY DECISIONS

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Key Decisions is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor
- 22          signed it into law. The law took effect on February 18, 2003. House Bill 38, now
- 23          codified at § 5-7-306, MCA, establishes civil penalties that are required to be
- 24          assessed against any person who fails to file lobbying disclosure reports within the
- 25          time required by law.

1           3. The initial 2007 lobbying disclosure report for Key Decisions was  
2 required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Key Decisions. The email advised principals that a lobbying  
5 financial disclosure report covering the month of January, 2007 was required to be  
6 filed by February 15, 2007. The email referenced the appropriate form that was  
7 required to be filed, known as a form L-5A, and noted that it was available for  
8 download on the Commissioner's website. Citing the provisions of § 5-7-208(4),  
9 MCA, the email stated: "A report must be filed in this office even though neither  
10 lobbying nor incurring of lobbying expenses may have occurred."

11           5. Key Decisions failed to file its L-5A on or before February 15, 2007.

12           6. On February 20, 2007, the Commissioner sent a letter to Steven Yeakel  
13 stating that the principal's January L-5A report was due February 15, 2007, but had  
14 not been received. The letter stated that a civil penalty started being assessed on  
15 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
16 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
17 delinquent report immediately, followed by a hard copy.

18           7. On February 21, 2007, the principal filed its report. Because the report  
19 was filed 3 days late, a \$150 civil penalty was assessed by the Commissioner.

20           8. Key Decisions requested a hearing to contest the civil penalty. The  
21 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on  
22 May 01, 2007. Key Decisions filed a written Waiver of Hearing and submitted a  
23 written statement for the Commissioner's consideration.

9. In its written statement the Key Decisions contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.



1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Key  
7 Decisions to file a report for January, 2007, even if Key Decisions made no  
8 lobbying payments during the reporting period.

9           6. As explained below, Key Decisions provided information and evidence  
10 establishing factors or circumstances in mitigation that justifies waiver of the civil  
11 penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Key Decisions is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Steven Yeakel  
17 Key Decisions  
18 PO Box 4663  
19 Helena MT 59604-4663

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
                 MEDCO HEALTH SOLUTIONS

6                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
7                   ORDER, AND MEMORANDUM OPINION

8  
9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Medco Health Solutions is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor
- 22          signed it into law. The law took effect on February 18, 2003. House Bill 38, now
- 23          codified at § 5-7-306, MCA, establishes civil penalties that are required to be
- 24          assessed against any person who fails to file lobbying disclosure reports within the
- 25          time required by law.
- 26
- 27

1           3. The initial 2007 lobbying disclosure report for Medco Health Solutions  
2 was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Medco Health Solutions. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Medco Health Solutions failed to file its L-5A on or before February 15,  
12 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Peter Harty  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 21, 2007, the principal filed its report. Because the report  
20 was filed 3 days late, a \$150 civil penalty was assessed by the Commissioner.

21           8. Medco Health Solutions requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on May 01, 2007. Medco Health Solutions filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.

9. In its written statement the Medco Health Solutions contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Medco  
7 Health Solutions to file a report for January, 2007, even if Medco Health Solutions  
8 made no lobbying payments during the reporting period.

9           6. As explained below, Medco Health Solutions provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Medco Health Solutions is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Peter Harty  
17 Medco Health Solutions  
18 19520 Yellow Wing Crt.  
19 Colorado Springs CO 80908

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 MISSOULA ORGANIZATION OF  
7 REALTORS

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER, AND MEMORANDUM OPINION

These informal contested case proceedings were filed before the Commissioner of Political Practices (Commissioner) to consider the appeal of the principal referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty resulting from its late filing of a lobbying disclosure report. The principal filed a written Waiver of Hearing waiving its right to an in-person hearing, and submitted a written statement for the Commissioner's consideration.

Based on the written submissions of the principal, the documents of record in the Commissioner's file, and the applicable law, the Commissioner makes the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. Missoula Organization of Realtors is a principal registered with the Commissioner.

2. The 2003 Montana Legislature passed House Bill 38 and the governor signed it into law. The law took effect on February 18, 2003. House Bill 38, now codified at § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any person who fails to file lobbying disclosure reports within the time required by law.



1           3. The initial 2007 lobbying disclosure report for Missoula Organization of  
2 Realtors was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Missoula Organization of Realtors. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Missoula Organization of Realtors failed to file its L-5A on or before  
13 February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Mac Hassman  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 20, 2007, the principal filed its report. Because the report  
21 was filed 2 days late, a \$100 civil penalty was assessed by the Commissioner.

22           8. Missoula Organization of Realtors requested a hearing to contest the civil  
23 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
24 Hearing on May 01, 2007. Missoula Organization of Realtors filed a written  
25 Waiver of Hearing and submitted a written statement for the Commissioner's  
26 consideration.

27

9. In its written statement the Missoula Organization of Realtors contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Missoula  
7 Organization of Realtors to file a report for January, 2007, even if Missoula  
8 Organization of Realtors made no lobbying payments during the reporting period.

9           6. As explained below, Missoula Organization of Realtors provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Missoula Organization of Realtors is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Mac Hassman  
17 Missoula Organization of Realtors  
18 715 Kensington, Suite A  
19 Missoula MT 59801

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

---

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 MONTANA ALTERNATIVE  
ADOLESCENT PRIVATE  
PROGRAMS

---

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

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9  
10           These informal contested case proceedings were filed before the  
11 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
12 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
13 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
14 resulting from its late filing of a lobbying disclosure report. The principal filed a  
15 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
16 written statement for the Commissioner's consideration.

17           Based on the written submissions of the principal, the documents of record in  
18 the Commissioner's file, and the applicable law, the Commissioner makes the  
19 following findings of fact, conclusions of law, and order.

20                   **FINDINGS OF FACT**

21           1. Montana Alternative Adolescent Private Programs is a principal registered  
22 with the Commissioner.

23           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
24 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
25 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
26 assessed against any person who fails to file lobbying disclosure reports within the  
27 time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Alternative  
2 Adolescent Private Programs was required to be filed no later than February 15,  
3 2007.

4           4. On January 29, 2007 the office of the Commissioner sent an email to all  
5 principals, including Montana Alternative Adolescent Private Programs. The email  
6 advised principals that a lobbying financial disclosure report covering the month of  
7 January, 2007 was required to be filed by February 15, 2007. The email referenced  
8 the appropriate form that was required to be filed, known as a form L-5A, and noted  
9 that it was available for download on the Commissioner's website. Citing the  
10 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
11 office even though neither lobbying nor incurring of lobbying expenses may have  
12 occurred."

13           5. Montana Alternative Adolescent Private Programs failed to file its L-5A  
14 on or before February 15, 2007.

15           6. On February 20, 2007, the Commissioner sent a letter to Jacqueline  
16 Rutzke stating that the principal's January L-5A report was due February 15, 2007,  
17 but had not been received. The letter stated that a civil penalty started being  
18 assessed on February 16, 2007, at \$50 per day, and would continue until the report  
19 was filed or until the penalty amount reached \$2,500. The letter urged the principal  
20 to fax the delinquent report immediately, followed by a hard copy.

21           7. On February 23, 2007, the principal filed its report. Because the report  
22 was filed 5 days late, a \$250 civil penalty was assessed by the Commissioner.

23           8. Montana Alternative Adolescent Private Programs requested a hearing to  
24 contest the civil penalty. The Commissioner issued a Notice of Agency Action and  
25 Opportunity for Hearing on May 01, 2007. Montana Alternative Adolescent Private  
26 Programs filed a written Waiver of Hearing and submitted a written statement for  
27 the Commissioner's consideration.

9. In its written statement the Montana Alternative Adolescent Private Programs contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or

1 waive the civil penalty. § 5-7-306(3), MCA.

2 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
3 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
4 .” The report “must include all payments made in that calendar year prior to  
5 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
6 reporting period, “the principal shall file a report stating that fact.”

7 5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
8 Alternative Adolescent Private Programs to file a report for January, 2007, even if  
9 Montana Alternative Adolescent Private Programs made no lobbying payments  
10 during the reporting period.

11 6. As explained below, Montana Alternative Adolescent Private Programs  
12 provided information and evidence establishing factors or circumstances in  
13 mitigation that justifies waiver of the civil penalty assessed by the Commissioner. §  
14 5-7-306(3), MCA.

### 15 **MEMORANDUM OPINION**

16 The filing deadlines for lobbying disclosure reports are established by statute,  
17 and cannot be extended. Moreover, a careful reading of the reporting requirements  
18 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
19 was required to be filed, regardless whether any payments were made during the  
20 reporting period. Nevertheless, in view of the potentially misleading language on  
21 form L-5A (which has since been clarified), it is appropriate to exercise the  
22 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

23 Although I am waiving the penalty in this particular case, I urge principals to  
24 carefully review the statutory filing requirements to ensure that they are in  
25 compliance with the law and to avoid the assessment of civil penalties in  
26 the future based on untimely filing of reports.



1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Alternative Adolescent Private Programs is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Jacqueline Rutzke  
17 Montana Alternative Adolescent Private Programs  
18 1342 Blue Slide Rd.  
19 Thompson Falls MT 59873

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA ASSOCIATION OF  
7           CLERKS & RECORDERS

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. Montana Association of Clerks & Records is a principal registered with  
23           the Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
             time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Association of  
2 Clerks & Records was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Association of Clerks & Records. The email  
5 advised principals that a lobbying financial disclosure report covering the month of  
6 January, 2007 was required to be filed by February 15, 2007. The email referenced  
7 the appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Montana Association of Clerks & Records failed to file its L-5A on or  
13 before February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Lisa Kimmet  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 22, 2007, the principal filed its report. Because the report  
21 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

22           8. Montana Association of Clerks & Records requested a hearing to  
23 contest the civil penalty. The Commissioner issued a Notice of Agency Action and  
24 Opportunity for Hearing on May 01, 2007. Montana Association of Clerks &  
25 Records filed a written Waiver of Hearing and submitted a written statement for  
26 the Commissioner's consideration.

27

9. In its written statement the Montana Association of Clerks & Recorders contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or

1 waive the civil penalty. § 5-7-306(3), MCA.

2 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
3 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
4 .” The report “must include all payments made in that calendar year prior to  
5 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
6 reporting period, “the principal shall file a report stating that fact.”

7 5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
8 Association of Clerks & Recorders to file a report for January, 2007, even if  
9 Montana Association of Clerks & Recorders made no lobbying payments during the  
10 reporting period.

11 6. As explained below, Montana Association of Clerks & Recorders  
12 provided information and evidence establishing factors or circumstances in  
13 mitigation that justifies waiver of the civil penalty assessed by the Commissioner. §  
14 5-7-306(3), MCA.

### 15 **MEMORANDUM OPINION**

16 The filing deadlines for lobbying disclosure reports are established by statute,  
17 and cannot be extended. Moreover, a careful reading of the reporting requirements  
18 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
19 was required to be filed, regardless whether any payments were made during the  
20 reporting period. Nevertheless, in view of the potentially misleading language on  
21 form L-5A (which has since been clarified), it is appropriate to exercise the  
22 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

23 Although I am waiving the penalty in this particular case, I urge principals to  
24 carefully review the statutory filing requirements to ensure that they are in  
25 compliance with the law and to avoid the assessment of civil penalties in  
26 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Association of Clerks & Recorders is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Lisa Kimmet  
17 Montana Association of Clerks & Recorders  
18 PO Box 125  
19 Terry MT 59349

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 MONTANA CHILDREN'S  
7 INITIATIVE

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER, AND MEMORANDUM OPINION

These informal contested case proceedings were filed before the Commissioner of Political Practices (Commissioner) to consider the appeal of the principal referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty resulting from its late filing of a lobbying disclosure report. The principal filed a written Waiver of Hearing waiving its right to an in-person hearing, and submitted a written statement for the Commissioner's consideration.

Based on the written submissions of the principal, the documents of record in the Commissioner's file, and the applicable law, the Commissioner makes the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. Montana Children's Initiative is a principal registered with the Commissioner.

2. The 2003 Montana Legislature passed House Bill 38 and the governor signed it into law. The law took effect on February 18, 2003. House Bill 38, now codified at § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any person who fails to file lobbying disclosure reports within the time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Children's  
2 Initiative was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Children's Initiative. The email advised principals  
5 that a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Montana Children's Initiative failed to file its L-5A on or before February  
12 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Jim Fitzgerald  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On March 7, 2007, the principal filed its report. Because the report was  
20 filed 13 days late, a \$650 civil penalty was assessed by the Commissioner.

21           8. Montana Children's Initiative requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on May 01, 2007. Montana Children's Initiative filed a written Waiver of  
24 Hearing and submitted a written statement for the Commissioner's consideration.



9. In its written statement the Montana Children's Initiative contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 Children's Initiative to file a report for January, 2007, even if Montana Children's  
8 Initiative made no lobbying payments during the reporting period.

9           6. As explained below, Montana Children's Initiative provided information  
10 and evidence establishing factors or circumstances in mitigation that justifies waiver  
11 of the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2       THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3  
4 against Montana Children's Initiative is waived.

5       DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8       Dennis Unsworth  
9       Commissioner of Political Practices

10       **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11       judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12       4-701 through 2-4-711.

13                               **CERTIFICATE OF SERVICE**

14       I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15       FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16       Jim Fitzgerald  
17       Montana Children's Initiative  
18       2331 Spruce St.  
19       Billings MT 59105

20       DATED: June 29, 2007

21                               \_\_\_\_\_  
22       Mary Baker  
23       Program Supervisor

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA COMMUNITY  
7           FOUNDATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                                   **FINDINGS OF FACT**

22           1. Montana Community Foundation is a principal registered with the  
23           Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
            time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Community  
2 Foundation was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Community Foundation. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Montana Community Foundation failed to file its L-5A on or before  
13 February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Linda Reed  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 22, 2007, the principal filed its report. Because the report  
21 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

22           8. Montana Community Foundation requested a hearing to contest the civil  
23 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
24 Hearing on May 01, 2007. Montana Community Foundation filed a written Waiver  
25 of Hearing and submitted a written statement for the Commissioner's consideration.

9. In its written statement the Montana Community Foundation contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 Community Foundation to file a report for January, 2007, even if Montana  
8 Community Foundation made no lobbying payments during the reporting period.

9           6. As explained below, Montana Community Foundation provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Community Foundation is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Linda Reed  
17 Montana Community Foundation  
18 PO Box 1145  
19 Helena MT 59624

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27



1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 MONTANA DEFENSE TRIAL  
7 LAWYERS

8  
9  
10                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
11                   ORDER, AND MEMORANDUM OPINION  
12

13           These informal contested case proceedings were filed before the  
14 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
15 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
16 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
17 resulting from its late filing of a lobbying disclosure report. The principal filed a  
18 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
19 written statement for the Commissioner's consideration.

20           Based on the written submissions of the principal, the documents of record in  
21 the Commissioner's file, and the applicable law, the Commissioner makes the  
22 following findings of fact, conclusions of law, and order.

23                   **FINDINGS OF FACT**

24           1. Montana Defense Trial Lawyers is a principal registered with the  
25 Commissioner.

26           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
27 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
assessed against any person who fails to file lobbying disclosure reports within the  
time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Defense Trial  
2 Lawyers was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Defense Trial Lawyers. The email advised principals  
5 that a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Montana Defense Trial Lawyers failed to file its L-5A on or before  
12 February 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Sue Weingartner  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 23, 2007, the principal filed its report. Because the report  
20 was filed 5 days late, a \$250 civil penalty was assessed by the Commissioner.

21           8. Montana Defense Trial Lawyers requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on May 01, 2007. Montana Defense Trial Lawyers filed a written Waiver  
24 of Hearing and submitted a written statement for the Commissioner's consideration.

9. In its written statement the Montana Defense Trial Lawyers contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 Defense Trial Lawyers to file a report for January, 2007, even if Montana Defense  
8 Trial Lawyers made no lobbying payments during the reporting period.

9           6. As explained below, Montana Defense Trial Lawyers provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Defense Trial Lawyers is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Sue Weingartner  
17 Montana Defense Trial Lawyers  
18 36 S. Last Chance Gulch Suite A  
19 Helena MT 59601

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA HISTORY  
7           FOUNDATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. Montana History Foundation is a principal registered with the  
23           Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
            time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana History  
2 Foundation was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana History Foundation. The email advised principals  
5 that a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Montana History Foundation failed to file its L-5A on or before February  
12 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Amy Sullivan  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 22, 2007, the principal filed its report. Because the report  
20 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

21           8. Montana History Foundation requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on May 02, 2007. Montana History Foundation filed a written Waiver of  
24 Hearing and submitted a written statement for the Commissioner's consideration.

9. In its written statement the Montana History Foundation contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.



1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 History Foundation to file a report for January, 2007, even if Montana History  
8 Foundation made no lobbying payments during the reporting period.

9           6. As explained below, Montana History Foundation provided information  
10 and evidence establishing factors or circumstances in mitigation that justifies waiver  
11 of the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana History Foundation is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Amy Sullivan  
17 Montana History Foundation  
18 PO Box 863  
19 Helena MT 59624

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA INJURED WORKERS  
7           RESOURCE COUNCIL

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. Montana Injured Workers Resource Council is a principal registered with  
23           the Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
             time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Injured Workers  
2 Resource Council was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Injured Workers Resource Council. The email  
5 advised principals that a lobbying financial disclosure report covering the month of  
6 January, 2007 was required to be filed by February 15, 2007. The email referenced  
7 the appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Montana Injured Workers Resource Council failed to file its L-5A on or  
13 before February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Glenn Gregor  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On March 5, 2007, the principal filed its report. Because the report was  
21 filed 11 days late, a \$550 civil penalty was assessed by the Commissioner.

22           8. Montana Injured Workers Resource Council requested a hearing to  
23 contest the civil penalty. The Commissioner issued a Notice of Agency Action and  
24 Opportunity for Hearing on . Montana Injured Workers Resource Council filed a  
25 written Waiver of Hearing and submitted a written statement for the  
26 Commissioner's consideration.

9. In its written statement the Montana Injured Workers Resource Council contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or

1 waive the civil penalty. § 5-7-306(3), MCA.

2 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
3 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
4 .” The report “must include all payments made in that calendar year prior to  
5 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
6 reporting period, “the principal shall file a report stating that fact.”

7 5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
8 Injured Workers Resource Council to file a report for January, 2007, even if  
9 Montana Injured Workers Resource Council made no lobbying payments during the  
10 reporting period.

11 6. As explained below, Montana Injured Workers Resource Council  
12 provided information and evidence establishing factors or circumstances in  
13 mitigation that justifies waiver of the civil penalty assessed by the Commissioner. §  
14 5-7-306(3), MCA.

### 15 **MEMORANDUM OPINION**

16 The filing deadlines for lobbying disclosure reports are established by statute,  
17 and cannot be extended. Moreover, a careful reading of the reporting requirements  
18 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
19 was required to be filed, regardless whether any payments were made during the  
20 reporting period. Nevertheless, in view of the potentially misleading language on  
21 form L-5A (which has since been clarified), it is appropriate to exercise the  
22 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

23 Although I am waiving the penalty in this particular case, I urge principals to  
24 carefully review the statutory filing requirements to ensure that they are in  
25 compliance with the law and to avoid the assessment of civil penalties in  
26 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Injured Workers Resource Council is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Glenn Gregor  
17 Montana Injured Workers Resource Council  
18 PO Box 180  
19 Helena MT 59624

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA METH PROJECT

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Montana Meth Project is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor
- 22          signed it into law. The law took effect on February 18, 2003. House Bill 38, now
- 23          codified at § 5-7-306, MCA, establishes civil penalties that are required to be
- 24          assessed against any person who fails to file lobbying disclosure reports within the
- 25          time required by law.



1           3. The initial 2007 lobbying disclosure report for Montana Meth Project was  
2 required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Meth Project. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Montana Meth Project failed to file its L-5A on or before February 15,  
12 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Don Hargrove  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 26, 2007, the principal filed its report. Because the report  
20 was filed 6 days late, a \$300 civil penalty was assessed by the Commissioner.

21           8. Montana Meth Project requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on June 11, 2007. Montana Meth Project filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.

9. In its written statement the Montana Meth Project contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 Meth Project to file a report for January, 2007, even if Montana Meth Project made  
8 no lobbying payments during the reporting period.

9           6. As explained below, Montana Meth Project provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Meth Project is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Don Hargrove  
17 Montana Meth Project  
18 1245 Windflower  
19 Helena MT 59601

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA PODIATRIC  
7           ASSOCIATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. Montana Podiatric Association is a principal registered with the  
23           Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
             time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Podiatric  
2 Association was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Podiatric Association. The email advised principals  
5 that a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Montana Podiatric Association failed to file its L-5A on or before  
12 February 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Marti Wangen  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 22, 2007, the principal filed its report. Because the report  
20 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

21           8. Montana Podiatric Association requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on May 01, 2007. Montana Podiatric Association filed a written Waiver of  
24 Hearing and submitted a written statement for the Commissioner's consideration.

9. In its written statement the Montana Podiatric Association contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . . .” The report “must include all payments made in that calendar year prior to February 1.” § 5-7-208(4), MCA, states that if no payments are made during the reporting period, “the principal shall file a report stating that fact.”

5. §§ 5-7-208(2)(a) and 5-7-208(4),MCA, read together, required Montana Podiatric Association to file a report for January, 2007, even if Montana Podiatric Association made no lobbying payments during the reporting period.

6. As explained below, Montana Podiatric Association provided information and evidence establishing factors or circumstances in mitigation that justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

# MEMORANDUM OPINION

The filing deadlines for lobbying disclosure reports are established by statute, and cannot be extended. Moreover, a careful reading of the reporting requirements in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period was required to be filed, regardless whether any payments were made during the reporting period. Nevertheless, in view of the potentially misleading language on form L-5A (which has since been clarified), it is appropriate to exercise the discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

Although I am waiving the penalty in this particular case, I urge principals to carefully review the statutory filing requirements to ensure that they are in compliance with the law and to avoid the assessment of civil penalties in the future based on untimely filing of reports.



1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Podiatric Association is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Marti Wangen  
17 Montana Podiatric Association  
18 36 S. Last Chance Gulch, Suite A  
19 Helena MT 59601

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA PSYCHOLOGICAL  
7           ASSOCIATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. Montana Psychological Association is a principal registered with the  
23           Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
            time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Psychological  
2 Association was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Psychological Association. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Montana Psychological Association failed to file its L-5A on or before  
13 February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Marti Wangen  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 22, 2007, the principal filed its report. Because the report  
21 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

22           8. Montana Psychological Association requested a hearing to contest the  
23 civil penalty. The Commissioner issued a Notice of Agency Action and Opportunity  
24 for Hearing on May 01, 2007. Montana Psychological Association filed a written  
25 Waiver of Hearing and submitted a written statement for the Commissioner's  
26 consideration.

27



4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . . .” The report “must include all payments made in that calendar year prior to February 1.” § 5-7-208(4), MCA, states that if no payments are made during the reporting period, “the principal shall file a report stating that fact.”

5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana Psychological Association to file a report for January, 2007, even if Montana Psychological Association made no lobbying payments during the reporting period.

6. As explained below, Montana Psychological Association provided information and evidence establishing factors or circumstances in mitigation that justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

## MEMORANDUM OPINION

The filing deadlines for lobbying disclosure reports are established by statute, and cannot be extended. Moreover, a careful reading of the reporting requirements in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period was required to be filed, regardless whether any payments were made during the reporting period. Nevertheless, in view of the potentially misleading language on form L-5A (which has since been clarified), it is appropriate to exercise the discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

Although I am waiving the penalty in this particular case, I urge principals to carefully review the statutory filing requirements to ensure that they are in compliance with the law and to avoid the assessment of civil penalties in the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Psychological Association is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Marti Wangen  
17 Montana Psychological Association  
18 36 S. Last Chance Gulch, Suite A  
19 Helena MT 59601

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA SOLID WASTE  
7           CONTRACTORS

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15           resulting from its late filing of a lobbying disclosure report. The principal filed a  
16           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17           written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19           the Commissioner's file, and the applicable law, the Commissioner makes the  
20           following findings of fact, conclusions of law, and order.

21                   **FINDINGS OF FACT**

22           1. Montana Solid Waste Contractors is a principal registered with the  
23           Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27           assessed against any person who fails to file lobbying disclosure reports within the  
             time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Solid Waste  
2 Contractors was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Solid Waste Contractors. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Montana Solid Waste Contractors failed to file its L-5A on or before  
13 February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Sue Weingartner  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 23, 2007, the principal filed its report. Because the report  
21 was filed 5 days late, a \$250 civil penalty was assessed by the Commissioner.

22           8. Montana Solid Waste Contractors requested a hearing to contest the civil  
23 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
24 Hearing on May 01, 2007. Montana Solid Waste Contractors filed a written Waiver  
25 of Hearing and submitted a written statement for the Commissioner's consideration.



9. In its written statement the Montana Solid Waste Contractors contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 Solid Waste Contractors to file a report for January, 2007, even if Montana Solid  
8 Waste Contractors made no lobbying payments during the reporting period.

9           6. As explained below, Montana Solid Waste Contractors provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Solid Waste Contractors is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Sue Weingartner  
17 Montana Solid Waste Contractors  
18 36 S. Last Chance Gulch, Suite A  
19 Helena MT 59601

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           MONTANA WOMEN VOTE

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13           resulting from its late filing of a lobbying disclosure report. The principal filed a  
14           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15           written statement for the Commissioner's consideration.

16           Based on the written submissions of the principal, the documents of record in  
17           the Commissioner's file, and the applicable law, the Commissioner makes the  
18           following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Montana Women Vote is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor
- 22           signed it into law. The law took effect on February 18, 2003. House Bill 38, now
- 23           codified at § 5-7-306, MCA, establishes civil penalties that are required to be
- 24           assessed against any person who fails to file lobbying disclosure reports within the
- 25           time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Women Vote was  
2 required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Women Vote. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Montana Women Vote failed to file its L-5A on or before February 15,  
12 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Terry Kendrick  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On , the principal filed its report. Because the report was filed 5 days late,  
20 a \$250 civil penalty was assessed by the Commissioner.

21           8. Montana Women Vote requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on May 02, 2007. Montana Women Vote filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.

9. In its written statement the Montana Women Vote contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 Women Vote to file a report for January, 2007, even if Montana Women Vote made  
8 no lobbying payments during the reporting period.

9           6. As explained below, Montana Women Vote provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Women Vote is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Terry Kendrick  
17 Montana Women Vote  
18 2525 Palmer St., Suite 1  
19 Missoula MT 59808

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27



1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 MONTANA WOMEN'S LOBBY

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13 resulting from its late filing of a lobbying disclosure report. The principal filed a  
14 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15 written statement for the Commissioner's consideration.

16           Based on the written submissions of the principal, the documents of record in  
17 the Commissioner's file, and the applicable law, the Commissioner makes the  
18 following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Montana Women's Lobby is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24 assessed against any person who fails to file lobbying disclosure reports within the  
25 time required by law.

1           3. The initial 2007 lobbying disclosure report for Montana Women's Lobby  
2 was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Montana Women's Lobby. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Montana Women's Lobby failed to file its L-5A on or before February 15,  
12 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Diane  
14 Ehernberger stating that the principal's January L-5A report was due February 15,  
15 2007, but had not been received. The letter stated that a civil penalty started being  
16 assessed on February 16, 2007, at \$50 per day, and would continue until the report  
17 was filed or until the penalty amount reached \$2,500. The letter urged the principal  
18 to fax the delinquent report immediately, followed by a hard copy.

19           7. On February 22, 2007, the principal filed its report. Because the report  
20 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

21           8. Montana Women's Lobby requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on May 01, 2007. Montana Women's Lobby filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.

9. In its written statement the Montana Women's Lobby contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Montana  
7 Women's Lobby to file a report for January, 2007, even if Montana Women's Lobby  
8 made no lobbying payments during the reporting period.

9           6. As explained below, Montana Women's Lobby provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Montana Women's Lobby is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Diane Ehernberger  
17 Montana Women's Lobby  
18 PO Box 11558  
19 Bozeman MT 59719

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 NATIONAL CENTER FOR  
APPROPRIATE  
TECHNOLOGY(GROW MT)

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9  
10           These informal contested case proceedings were filed before the  
11 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
12 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
13 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
14 resulting from its late filing of a lobbying disclosure report. The principal filed a  
15 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
16 written statement for the Commissioner's consideration.

17           Based on the written submissions of the principal, the documents of record in  
18 the Commissioner's file, and the applicable law, the Commissioner makes the  
19 following findings of fact, conclusions of law, and order.

20                   **FINDINGS OF FACT**

21           1. National Center for Appropriate Technology(Grow MT) is a principal  
22 registered with the Commissioner.

23           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
24 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
25 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
26 assessed against any person who fails to file lobbying disclosure reports within the  
27 time required by law.

1           3. The initial 2007 lobbying disclosure report for National Center for  
2 Appropriate Technology(Grow MT) was required to be filed no later than February  
3 15, 2007.

4           4. On January 29, 2007 the office of the Commissioner sent an email to all  
5 principals, including National Center for Appropriate Technology(Grow MT). The  
6 email advised principals that a lobbying financial disclosure report covering the  
7 month of January, 2007 was required to be filed by February 15, 2007. The email  
8 referenced the appropriate form that was required to be filed, known as a form L-  
9 5A, and noted that it was available for download on the Commissioner's website.  
10 Citing the provisions of § 5-7-208(4), MCA, the email stated: "A report must be  
11 filed in this office even though neither lobbying nor incurring of lobbying expenses  
12 may have occurred."

13           5. National Center for Appropriate Technology(Grow MT) failed to file its  
14 L-5A on or before February 15, 2007.

15           6. On February 20, 2007, the Commissioner sent a letter to Kathy Hadley  
16 stating that the principal's January L-5A report was due February 15, 2007, but had  
17 not been received. The letter stated that a civil penalty started being assessed on  
18 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
19 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
20 delinquent report immediately, followed by a hard copy.

21           7. On February 22, 2007, the principal filed its report. Because the report  
22 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

23           8. National Center for Appropriate Technology(Grow MT) requested a  
24 hearing to contest the civil penalty. The Commissioner issued a Notice of Agency  
25 Action and Opportunity for Hearing on May 01, 2007. National Center for  
26 Appropriate Technology(Grow MT) filed a written Waiver of Hearing and  
27 submitted a written statement for the Commissioner's consideration.

9. In its written statement the National Center for Appropriate Technology(Grow MT) contends the L-5A form that was posted on the Commissioner’s website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or



1 waive the civil penalty. § 5-7-306(3), MCA.

2 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
3 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
4 .” The report “must include all payments made in that calendar year prior to  
5 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
6 reporting period, “the principal shall file a report stating that fact.”

7 5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required National  
8 Center for Appropriate Technology(Grow MT) to file a report for January, 2007,  
9 even if National Center for Appropriate Technology(Grow MT) made no lobbying  
10 payments during the reporting period.

11 6. As explained below, National Center for Appropriate Technology(Grow  
12 MT) provided information and evidence establishing factors or circumstances in  
13 mitigation that justifies waiver of the civil penalty assessed by the Commissioner. §  
14 5-7-306(3), MCA.

### 15 **MEMORANDUM OPINION**

16 The filing deadlines for lobbying disclosure reports are established by statute,  
17 and cannot be extended. Moreover, a careful reading of the reporting requirements  
18 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
19 was required to be filed, regardless whether any payments were made during the  
20 reporting period. Nevertheless, in view of the potentially misleading language on  
21 form L-5A (which has since been clarified), it is appropriate to exercise the  
22 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

23 Although I am waiving the penalty in this particular case, I urge principals to  
24 carefully review the statutory filing requirements to ensure that they are in  
25 compliance with the law and to avoid the assessment of civil penalties in  
26 the future based on untimely filing of reports.  
27

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against National Center for Appropriate Technology(Grow MT) is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Kathy Hadley  
17 National Center for Appropriate Technology(Grow MT)  
18 PO Box 3838  
19 Butte MT 59702

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 POLSON SCHOOL BOARD OF  
7 TRUSTEES

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FINDINGS OF FACT, CONCLUSIONS OF LAW,  
ORDER, AND MEMORANDUM OPINION

These informal contested case proceedings were filed before the Commissioner of Political Practices (Commissioner) to consider the appeal of the principal referenced above. Pursuant to the provisions of Montana Code Annotated § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty resulting from its late filing of a lobbying disclosure report. The principal filed a written Waiver of Hearing waiving its right to an in-person hearing, and submitted a written statement for the Commissioner's consideration.

Based on the written submissions of the principal, the documents of record in the Commissioner's file, and the applicable law, the Commissioner makes the following findings of fact, conclusions of law, and order.

**FINDINGS OF FACT**

1. Polson School Board of Trustees is a principal registered with the Commissioner.

2. The 2003 Montana Legislature passed House Bill 38 and the governor signed it into law. The law took effect on February 18, 2003. House Bill 38, now codified at § 5-7-306, MCA, establishes civil penalties that are required to be assessed against any person who fails to file lobbying disclosure reports within the time required by law.

1           3. The initial 2007 lobbying disclosure report for Polson School Board of  
2 Trustees was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Polson School Board of Trustees. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Polson School Board of Trustees failed to file its L-5A on or before  
13 February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Theresa Taylor  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 22, 2007, the principal filed its report. Because the report  
21 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

22           8. Polson School Board of Trustees requested a hearing to contest the civil  
23 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
24 Hearing on May 01, 2007. Polson School Board of Trustees filed a written Waiver  
25 of Hearing and submitted a written statement for the Commissioner's consideration.

9. In its written statement the Polson School Board of Trustees contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Polson  
7 School Board of Trustees to file a report for January, 2007, even if Polson School  
8 Board of Trustees made no lobbying payments during the reporting period.

9           6. As explained below, Polson School Board of Trustees provided  
10 information and evidence establishing factors or circumstances in mitigation that  
11 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
12 MCA.

### 13                                   **MEMORANDUM OPINION**

14           The filing deadlines for lobbying disclosure reports are established by statute,  
15 and cannot be extended. Moreover, a careful reading of the reporting requirements  
16 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
17 was required to be filed, regardless whether any payments were made during the  
18 reporting period. Nevertheless, in view of the potentially misleading language on  
19 form L-5A (which has since been clarified), it is appropriate to exercise the  
20 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

21           Although I am waiving the penalty in this particular case, I urge principals to  
22 carefully review the statutory filing requirements to ensure that they are in  
23 compliance with the law and to avoid the assessment of civil penalties in  
24 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Polson School Board of Trustees is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Theresa Taylor  
17 Polson School Board of Trustees  
18 111 4th Ave. East  
19 Polson MT 59860

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           PRIDE

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. PRIDE is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22          signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23          codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24          assessed against any person who fails to file lobbying disclosure reports within the  
25          time required by law.



1           3. The initial 2007 lobbying disclosure report for PRIDE was required to be  
2 filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including PRIDE. The email advised principals that a lobbying financial  
5 disclosure report covering the month of January, 2007 was required to be filed by  
6 February 15, 2007. The email referenced the appropriate form that was required to  
7 be filed, known as a form L-5A, and noted that it was available for download on the  
8 Commissioner's website. Citing the provisions of § 5-7-208(4), MCA, the email  
9 stated: "A report must be filed in this office even though neither lobbying nor  
10 incurring of lobbying expenses may have occurred."

11           5. PRIDE failed to file its L-5A on or before February 15, 2007.

12           6. On February 20, 2007, the Commissioner sent a letter to Bernadette  
13 Franks-Ongoy stating that the principal's January L-5A report was due February 15,  
14 2007, but had not been received. The letter stated that a civil penalty started being  
15 assessed on February 16, 2007, at \$50 per day, and would continue until the report  
16 was filed or until the penalty amount reached \$2,500. The letter urged the principal  
17 to fax the delinquent report immediately, followed by a hard copy.

18           7. On February 22, 2007, the principal filed its report. Because the report  
19 was filed 4 days late, a \$200 civil penalty was assessed by the Commissioner.

20           8. PRIDE requested a hearing to contest the civil penalty. The  
21 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on  
22 May 01, 2007. PRIDE filed a written Waiver of Hearing and submitted a written  
23 statement for the Commissioner's consideration.

1           9. In its written statement the PRIDE contends the L-5A form that was  
2 posted on the Commissioner's website contained language that was confusing. The  
3 principal notes that the L-5A form contains the following statement applicable to  
4 reports for the period January 1 through January 31:

5           Report is required only if reportable payments exceeding \$2,300 for  
6 lobbying activities or to support or assist lobbying activities have been  
made during the reporting period.

7 The principal contends that this statement on the L-5A form led to its conclusion  
8 that no report needed to be filed, because reportable payments exceeding \$2,300  
9 were not made by the principal during the reporting period.

10           10. After receiving many inquiries regarding the language on the L-5A, the  
11 Commissioner reviewed the language on the form and made some revisions  
12 intended to clarify the reporting requirements. The revised version of the form was  
13 posted on the Commissioner's website in April, 2007.

#### 14                                   CONCLUSIONS OF LAW

15           1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-  
16 604 and 5-7-306, MCA.

17           2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

18           3. § 5-7-306, MCA, provides:

19           **Civil penalties for delays in filing -- option for hearing --**  
20 **suspension of penalty.** (1) In addition to any other penalties or  
21 remedies established by this chapter, a person who fails to file a report  
22 within the time required by this chapter is subject to a civil penalty of  
\$50 for each working day that the report is late until the report is filed  
or until the penalties reach a maximum of \$2,500 for each late report.

23 The person against whom a penalty is assessed may request an informal contested  
24 case hearing before the Commissioner. At the hearing, the Commissioner is  
25 required to consider any factors or circumstances in mitigation, and may reduce or  
26 waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required PRIDE to  
7 file a report for January, 2007, even if PRIDE made no lobbying payments during  
8 the reporting period.

9           6. As explained below, PRIDE provided information and evidence  
10 establishing factors or circumstances in mitigation that justifies waiver of the civil  
11 penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against PRIDE is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Bernadette Franks-Ongoy  
17 PRIDE  
18 PO Box 775  
19 Helena MT 59624

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 ROSEBUD ENERGY  
7 CORPORATION

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15 resulting from its late filing of a lobbying disclosure report. The principal filed a  
16 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17 written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19 the Commissioner's file, and the applicable law, the Commissioner makes the  
20 following findings of fact, conclusions of law, and order.

21                                   **FINDINGS OF FACT**

22           1. Rosebud Energy Corporation is a principal registered with the  
23 Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27 assessed against any person who fails to file lobbying disclosure reports within the  
time required by law.

1           3. The initial 2007 lobbying disclosure report for Rosebud Energy  
2 Corporation was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Rosebud Energy Corporation. The email advised principals  
5 that a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Rosebud Energy Corporation failed to file its L-5A on or before February  
12 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Owen Orndorff  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 23, 2007, the principal filed its report. Because the report  
20 was filed 5 days late, a \$250 civil penalty was assessed by the Commissioner.

21           8. Rosebud Energy Corporation requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on May 01, 2007. Rosebud Energy Corporation filed a written Waiver of  
24 Hearing and submitted a written statement for the Commissioner's consideration.

9. In its written statement the Rosebud Energy Corporation contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Rosebud  
7 Energy Corporation to file a report for January, 2007, even if Rosebud Energy  
8 Corporation made no lobbying payments during the reporting period.

9           6. As explained below, Rosebud Energy Corporation provided information  
10 and evidence establishing factors or circumstances in mitigation that justifies waiver  
11 of the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.



1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Rosebud Energy Corporation is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Owen Orndorff  
17 Rosebud Energy Corporation  
18 1087 W. River St. #200  
19 Boise ID 83702

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
                 ROSEBUD OPERATING SERVICES

6                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
7                   ORDER, AND MEMORANDUM OPINION

8  
9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

20           1. Rosebud Operating Services is a principal registered with the  
21          Commissioner.

22           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
23          signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
24          codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
25          assessed against any person who fails to file lobbying disclosure reports within the  
26          time required by law.

1           3. The initial 2007 lobbying disclosure report for Rosebud Operating  
2 Services was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Rosebud Operating Services. The email advised principals that  
5 a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Rosebud Operating Services failed to file its L-5A on or before February  
12 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Owen Orndorff  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 23, 2007, the principal filed its report. Because the report  
20 was filed 5 days late, a \$250 civil penalty was assessed by the Commissioner.

21           8. Rosebud Operating Services requested a hearing to contest the civil  
22 penalty. The Commissioner issued a Notice of Agency Action and Opportunity for  
23 Hearing on May 01, 2007. Rosebud Operating Services filed a written Waiver of  
24 Hearing and submitted a written statement for the Commissioner's consideration.

9. In its written statement the Rosebud Operating Services contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing -- suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Rosebud  
7 Operating Services to file a report for January, 2007, even if Rosebud Operating  
8 Services made no lobbying payments during the reporting period.

9           6. As explained below, Rosebud Operating Services provided information  
10 and evidence establishing factors or circumstances in mitigation that justifies waiver  
11 of the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Rosebud Operating Services is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Owen Orndorff  
17 Rosebud Operating Services  
18 1087 W. River St. #200  
19 Boise ID 83702

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
6           SPRING CREEK LODGE

7                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
8                   ORDER, AND MEMORANDUM OPINION

9           These informal contested case proceedings were filed before the  
10           Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11           principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12           § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13           resulting from its late filing of a lobbying disclosure report. The principal filed a  
14           written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15           written statement for the Commissioner's consideration.

16           Based on the written submissions of the principal, the documents of record in  
17           the Commissioner's file, and the applicable law, the Commissioner makes the  
18           following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

- 20           1. Spring Creek Lodge is a principal registered with the Commissioner.
- 21           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
22           signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
23           codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
24           assessed against any person who fails to file lobbying disclosure reports within the  
25           time required by law.
- 26  
27

1           3. The initial 2007 lobbying disclosure report for Spring Creek Lodge was  
2 required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Spring Creek Lodge. The email advised principals that a  
5 lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Spring Creek Lodge failed to file its L-5A on or before February 15, 2007.  
12

13           6. On February 20, 2007, the Commissioner sent a letter to Chaffin Pullan  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 23, 2007, the principal filed its report. Because the report  
20 was filed 5 days late, a \$250 civil penalty was assessed by the Commissioner.

21           8. Spring Creek Lodge requested a hearing to contest the civil penalty. The  
22 Commissioner issued a Notice of Agency Action and Opportunity for Hearing on  
23 May 01, 2007. Spring Creek Lodge filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.  
25  
26  
27



9. In its written statement the Spring Creek Lodge contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Spring  
7 Creek Lodge to file a report for January, 2007, even if Spring Creek Lodge made  
8 no lobbying payments during the reporting period.

9           6. As explained below, Spring Creek Lodge provided information and  
10 evidence establishing factors or circumstances in mitigation that justifies waiver of  
11 the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Spring Creek Lodge is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6 

7  
8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Chaffin Pullan  
17 Spring Creek Lodge  
18 76 Spring Creek Rd.  
19 Thompson Falls MT 59873

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27

1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4           IN THE MATTER OF THE CIVIL  
5           PENALTY IMPOSED AGAINST  
                 TONGUE RIVER WATER USERS

6                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
7                   ORDER, AND MEMORANDUM OPINION

8  
9           These informal contested case proceedings were filed before the  
10          Commissioner of Political Practices (Commissioner) to consider the appeal of the  
11          principal referenced above. Pursuant to the provisions of Montana Code Annotated  
12          § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
13          resulting from its late filing of a lobbying disclosure report. The principal filed a  
14          written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
15          written statement for the Commissioner's consideration.

16          Based on the written submissions of the principal, the documents of record in  
17          the Commissioner's file, and the applicable law, the Commissioner makes the  
18          following findings of fact, conclusions of law, and order.

19                   **FINDINGS OF FACT**

20           1. Tongue River Water Users is a principal registered with the  
21          Commissioner.

22           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
23          signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
24          codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
25          assessed against any person who fails to file lobbying disclosure reports within the  
26          time required by law.

1           3. The initial 2007 lobbying disclosure report for Tongue River Water Users  
2 was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Tongue River Water Users. The email advised principals that  
5 a lobbying financial disclosure report covering the month of January, 2007 was  
6 required to be filed by February 15, 2007. The email referenced the appropriate  
7 form that was required to be filed, known as a form L-5A, and noted that it was  
8 available for download on the Commissioner's website. Citing the provisions of §  
9 5-7-208(4), MCA, the email stated: "A report must be filed in this office even  
10 though neither lobbying nor incurring of lobbying expenses may have occurred."

11           5. Tongue River Water Users failed to file its L-5A on or before February  
12 15, 2007.

13           6. On February 20, 2007, the Commissioner sent a letter to Art Hayes, Jr.  
14 stating that the principal's January L-5A report was due February 15, 2007, but had  
15 not been received. The letter stated that a civil penalty started being assessed on  
16 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
17 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
18 delinquent report immediately, followed by a hard copy.

19           7. On February 23, 2007, the principal filed its report. Because the report  
20 was filed 5 days late, a \$250 civil penalty was assessed by the Commissioner.

21           8. Tongue River Water Users requested a hearing to contest the civil penalty.  
22 The Commissioner issued a Notice of Agency Action and Opportunity for Hearing  
23 on May 01, 2007. Tongue River Water Users filed a written Waiver of Hearing and  
24 submitted a written statement for the Commissioner's consideration.

1           9. In its written statement the Tongue River Water Users contends the L-5A  
2 form that was posted on the Commissioner's website contained language that was  
3 confusing. The principal notes that the L-5A form contains the following statement  
4 applicable to reports for the period January 1 through January 31:

5           Report is required only if reportable payments exceeding \$2,300 for  
6           lobbying activities or to support or assist lobbying activities have been  
6           made during the reporting period.

7           The principal contends that this statement on the L-5A form led to its conclusion  
8 that no report needed to be filed, because reportable payments exceeding \$2,300  
9 were not made by the principal during the reporting period.

10           10. After receiving many inquiries regarding the language on the L-5A, the  
11 Commissioner reviewed the language on the form and made some revisions  
12 intended to clarify the reporting requirements. The revised version of the form was  
13 posted on the Commissioner's website in April, 2007.

#### 14                                   CONCLUSIONS OF LAW

15           1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-  
16 604 and 5-7-306, MCA.

17           2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

18           3. § 5-7-306, MCA, provides:

19           **Civil penalties for delays in filing -- option for hearing --**  
20           **suspension of penalty.** (1) In addition to any other penalties or  
21 remedies established by this chapter, a person who fails to file a report  
22 within the time required by this chapter is subject to a civil penalty of  
22 \$50 for each working day that the report is late until the report is filed  
22 or until the penalties reach a maximum of \$2,500 for each late report.

23           The person against whom a penalty is assessed may request an informal contested  
24 case hearing before the Commissioner. At the hearing, the Commissioner is  
25 required to consider any factors or circumstances in mitigation, and may reduce or  
26 waive the civil penalty. § 5-7-306(3), MCA.

1           4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
2 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
3 .” The report “must include all payments made in that calendar year prior to  
4 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
5 reporting period, “the principal shall file a report stating that fact.”

6           5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required Tongue  
7 River Water Users to file a report for January, 2007, even if Tongue River Water  
8 Users made no lobbying payments during the reporting period.

9           6. As explained below, Tongue River Water Users provided information  
10 and evidence establishing factors or circumstances in mitigation that justifies waiver  
11 of the civil penalty assessed by the Commissioner. § 5-7-306(3), MCA.

#### 12                                   **MEMORANDUM OPINION**

13           The filing deadlines for lobbying disclosure reports are established by statute,  
14 and cannot be extended. Moreover, a careful reading of the reporting requirements  
15 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
16 was required to be filed, regardless whether any payments were made during the  
17 reporting period. Nevertheless, in view of the potentially misleading language on  
18 form L-5A (which has since been clarified), it is appropriate to exercise the  
19 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

20           Although I am waiving the penalty in this particular case, I urge principals to  
21 carefully review the statutory filing requirements to ensure that they are in  
22 compliance with the law and to avoid the assessment of civil penalties in  
23 the future based on untimely filing of reports.

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Tongue River Water Users is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Art Hayes, Jr.  
17 Tongue River Water Users  
18 HC 32 Box 4161  
19 Miles City MT 59301

20 DATED: June 29, 2007

21 \_\_\_\_\_  
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27



1                   BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
2                   STATE OF MONTANA

3  
4 IN THE MATTER OF THE CIVIL  
5 PENALTY IMPOSED AGAINST  
6 YELLOWSTONE ENERGY  
7 LIMITED PARTNERSHIP

8  
9                   FINDINGS OF FACT, CONCLUSIONS OF LAW,  
10                  ORDER, AND MEMORANDUM OPINION

11           These informal contested case proceedings were filed before the  
12 Commissioner of Political Practices (Commissioner) to consider the appeal of the  
13 principal referenced above. Pursuant to the provisions of Montana Code Annotated  
14 § 5-7-306, the principal appealed the Commissioner's assessment of a civil penalty  
15 resulting from its late filing of a lobbying disclosure report. The principal filed a  
16 written Waiver of Hearing waiving its right to an in-person hearing, and submitted a  
17 written statement for the Commissioner's consideration.

18           Based on the written submissions of the principal, the documents of record in  
19 the Commissioner's file, and the applicable law, the Commissioner makes the  
20 following findings of fact, conclusions of law, and order.

21                                   **FINDINGS OF FACT**

22           1. Yellowstone Energy Limited Partnership is a principal registered with the  
23 Commissioner.

24           2. The 2003 Montana Legislature passed House Bill 38 and the governor  
25 signed it into law. The law took effect on February 18, 2003. House Bill 38, now  
26 codified at § 5-7-306, MCA, establishes civil penalties that are required to be  
27 assessed against any person who fails to file lobbying disclosure reports within the  
time required by law.

1           3. The initial 2007 lobbying disclosure report for Yellowstone Energy  
2 Limited Partnership was required to be filed no later than February 15, 2007.

3           4. On January 29, 2007 the office of the Commissioner sent an email to all  
4 principals, including Yellowstone Energy Limited Partnership. The email advised  
5 principals that a lobbying financial disclosure report covering the month of January,  
6 2007 was required to be filed by February 15, 2007. The email referenced the  
7 appropriate form that was required to be filed, known as a form L-5A, and noted  
8 that it was available for download on the Commissioner's website. Citing the  
9 provisions of § 5-7-208(4), MCA, the email stated: "A report must be filed in this  
10 office even though neither lobbying nor incurring of lobbying expenses may have  
11 occurred."

12           5. Yellowstone Energy Limited Partnership failed to file its L-5A on or  
13 before February 15, 2007.

14           6. On February 20, 2007, the Commissioner sent a letter to Owen Orndorff  
15 stating that the principal's January L-5A report was due February 15, 2007, but had  
16 not been received. The letter stated that a civil penalty started being assessed on  
17 February 16, 2007, at \$50 per day, and would continue until the report was filed or  
18 until the penalty amount reached \$2,500. The letter urged the principal to fax the  
19 delinquent report immediately, followed by a hard copy.

20           7. On February 20, 2007, the principal filed its report. Because the report  
21 was filed 2 days late, a \$100 civil penalty was assessed by the Commissioner.

22           8. Yellowstone Energy Limited Partnership requested a hearing to contest  
23 the civil penalty. The Commissioner issued a Notice of Agency Action and  
24 Opportunity for Hearing on May 01, 2007. Yellowstone Energy Limited  
25 Partnership filed a written Waiver of Hearing and submitted a written statement for  
26 the Commissioner's consideration.

27

9. In its written statement the Yellowstone Energy Limited Partnership contends the L-5A form that was posted on the Commissioner's website contained language that was confusing. The principal notes that the L-5A form contains the following statement applicable to reports for the period January 1 through January 31:

Report is required only if reportable payments exceeding \$2,300 for lobbying activities or to support or assist lobbying activities have been made during the reporting period.

The principal contends that this statement on the L-5A form led to its conclusion that no report needed to be filed, because reportable payments exceeding \$2,300 were not made by the principal during the reporting period.

10. After receiving many inquiries regarding the language on the L-5A, the Commissioner reviewed the language on the form and made some revisions intended to clarify the reporting requirements. The revised version of the form was posted on the Commissioner's website in April, 2007.

## CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to §§ 2-4-604 and 5-7-306, MCA.

2. Notice of the hearing was provided as required by law. § 2-4-601, MCA.

3. § 5-7-306, MCA, provides:

**Civil penalties for delays in filing -- option for hearing --**

**suspension of penalty.** (1) In addition to any other penalties or remedies established by this chapter, a person who fails to file a report within the time required by this chapter is subject to a civil penalty of \$50 for each working day that the report is late until the report is filed or until the penalties reach a maximum of \$2,500 for each late report.

The person against whom a penalty is assessed may request an informal contested case hearing before the Commissioner. At the hearing, the Commissioner is required to consider any factors or circumstances in mitigation, and may reduce or

1 waive the civil penalty. § 5-7-306(3), MCA.

2 4. § 5-7-208(2)(a), MCA, requires a lobbying disclosure report to be filed  
3 with the Commissioner “by February 15<sup>th</sup> of any year the legislature is in session . . .  
4 .” The report “must include all payments made in that calendar year prior to  
5 February 1.” § 5-7-208(4), MCA, states that if no payments are made during the  
6 reporting period, “the principal shall file a report stating that fact.”

7 5. §§ 5-7-208(2)(a) and 5-7-208(4), MCA, read together, required  
8 Yellowstone Energy Limited Partnership to file a report for January, 2007, even if  
9 Yellowstone Energy Limited Partnership made no lobbying payments during the  
10 reporting period.

11 6. As explained below, Yellowstone Energy Limited Partnership provided  
12 information and evidence establishing factors or circumstances in mitigation that  
13 justifies waiver of the civil penalty assessed by the Commissioner. § 5-7-306(3),  
14 MCA.

### 15 **MEMORANDUM OPINION**

16 The filing deadlines for lobbying disclosure reports are established by statute,  
17 and cannot be extended. Moreover, a careful reading of the reporting requirements  
18 in § 5-7-208, MCA, discloses that a report for the January, 2007 reporting period  
19 was required to be filed, regardless whether any payments were made during the  
20 reporting period. Nevertheless, in view of the potentially misleading language on  
21 form L-5A (which has since been clarified), it is appropriate to exercise the  
22 discretion granted in § 5-7-306, MCA, by waiving the penalty amount.

23 Although I am waiving the penalty in this particular case, I urge principals to  
24 carefully review the statutory filing requirements to ensure that they are in  
25 compliance with the law and to avoid the assessment of civil penalties in  
26 the future based on untimely filing of reports.  
27

1 **ORDER**

2 THEREFORE, IT IS HEREBY ORDERED that the civil penalty assessed  
3 against Yellowstone Energy Limited Partnership is waived.  
4

5 DATED this 29<sup>th</sup> day of June, 2007.

6  
7 

8 Dennis Unsworth  
9 Commissioner of Political Practices

10 **NOTICE:** This is a final decision in a contested case. You have the right to seek  
11 judicial review of this decision pursuant to the provisions of Mont. Code Ann. §§ 2-  
12 4-701 through 2-4-711.

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that I caused a true and accurate copy of the foregoing FINDINGS OF  
15 FACT, CONCLUSIONS OF LAW, ORDER, AND MEMORANDUM OPINION to be mailed to:

16 Owen Orndorff  
17 Yellowstone Energy Limited Partnership  
18 1087 W. River St. #200  
19 Boise ID 83702

20 DATED: June 29, 2007

21   
22 Mary Baker  
23 Program Supervisor  
24  
25  
26  
27